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IN THE

Supreme Court of the United States

October Term, 1975
No. 75-802

JOSFINA ACUNA, CECILIO AGUIRRE, MANUEL ALVAREZ, JOSE BARGAS, CARMEN BECERRA, ELISEO BECERRA, RAFAEL CAMARENA, JESUS CASILLAS, ANGEL CASTOR, LUIS CERVANTES, JOSE CHEVEZ, RUBEN CLEMENTE, JESUS COMPARAN, RODOLFO CORTES, JOSE COVARUVIAS, MAURICIO CUELLAR, JOSE CURIEL, ALFREDO DUARTE, SANTIAGO E. ESQUIVEL, ALBERTO FIERROS, GABRIEL FIERROS, SILVIA FIERROS, MARIA FRANCO, BIANCA GALLARDO, HOMERO GARCIA, GEORGE GARNICA, ANTONIO GONZALES, FERNANDO GONZALEZ, JESUS GONZALEZ, JOSE GONZALEZ, MANUEL J. MACIAS GONZALEZ, MARTHA GANZALEZ, OFELIA R. GONZALEZ, ROBERTO GONZALEZ, RUBEN GONZALEZ, ESPERANZA HERRERA, AMALIA JOYA, ADAN MACIAS, EMILIO MARAVILLA, TERESA MEJIA, ANTONIO MENDEZ, ROBERT MENDEZ, ALEJANDRO MILLER, CARLOTTA MOLINA, CARMEN MONTEON, JOSE MORALES, VICTORIA MORENO, SERGIO NARES, MANUEL NIEVES, FIDEL OCEGEDA, GLORIA OLIVAS, JOLIETA ORTEGA, GLORIA PEDRAZA, SONNIA PEREZ, DONATO PRECIADO, ANGEL RAMIREZ, EUGENIO RAMIREZ, TEDFILO REYES, ALBERTO RIVERA, MARIA RODRIGUEZ, REYNALDO RODRIGUEZ, DANIEL SANCHEZ, ROLANDO SANTOS, VIRGINIA TRISTAN, TRINIDAD P. VARGAS, and REBECCA VASQUEZ, *Petitioners and Appellants,*

vs.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD, *Respondent and Respondent.*

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

Respondent California Unemployment Insurance Appeals Board files this brief in opposition to the Petition for Writ of Certiorari filed in this Court on December 5, 1975, and respectfully prays that this Court deny the petition.

BLEED THROUGH

Introduction

The opinion of the California Court of Appeal, attached to the Petition for Writ of Certiorari as an appendix, and petitioners' Statement of the Case adequately set forth the factual and procedural matters which have transpired.

Why the Court of Appeal Was Correct

The opinion of the California Court of Appeal holding that California's policy of denying unemployment insurance benefits to workers on strike because they are engaged in a trade dispute does not conflict with the Labor Management Relations Act of 1947, and hence is not invalid on account of the Supremacy Clause of the federal Constitution, was correct and in accord with federal law.

This Court has made it clear that in the area of labor relations, the states retain much latitude in which they may resolve certain issues, stating:

> " 'Obvious conflict, actual or potential, leads to easy judicial exclusion of state action. . . . the Labor Management Relations Act "leaves much to the states, though Congress has refrained from telling us how much." . . .' " *San Diego Unions v. Garmon*, 359 U.S. at 240 (1959). *See also Weber v. Anheuser-Busch*, 348 U.S. 468, 480-81 (1955); *Sears, Roebuck & Co. v. San Diego County Dist. Council of Carpenters*, 52 Cal App. 3d 690, 695 (1975).

This Court held that state jurisdiction is not preempted by the National Labor Relations Act in areas involving a "compelling state interest" in the absence

of "clearly expressed congressional direction." *San Diego Unions v. Garmon, supra,* 359 U.S. at 243-44, 247.

The National Labor Relations Act itself is silent on the question as to whether those voluntarily on strike are disqualified for unemployment benefits but the federal machinery concerning the state's administration of the program is strict and clear. Specifically, Title III of the Social Security Act and the Federal Unemployment Tax Act require the Secretary of Labor to determine each year whether state laws conform to the requirements of these federal acts. (26 U.S.C. § 3304(a), (c).) Since the inception of California's Unemployment Insurance program in 1935 to the present time, neither the Secretary of Labor nor the National Labor Relations Board has ever "noticed" California law as interfering with or in any way affecting the National Labor Relations Act or the National Labor Relations Board in the administration of the Act.

In fact, California's policy of neutrality is the only possible course open to the State to avoid taking a side in a trade dispute. If strikers were paid benefits while engaged in a trade dispute, the employer would argue that the State was subsidizing one of the parties. (*See Grinnell Corp. v. Hackett* (1st Cir. 1973) 475 F. 2d 449.)

Forty-eight states deny unemployment insurance benefits to persons unemployed due to labor disputes. Only two states, Rhode Island and New York, allow such persons to receive unemployment insurance benefits, and both pay benefits to such persons only after a waiting period of several weeks has been satisfied. *Grinnell Corp. v. Hackett, supra,* 475 F. 2d 449, 457.

Petitioners, in effect, contend that California and all other states have, through the operation of their unemployment insurance programs, been in violation of federal law since the inception of those programs. Surely if this State action was contrary to Congressional intent, this situation would have been legislatively remedied long ago.

Petitioners' attempt to disparage the State's position and cast upon them a role favoring one of the parties to a trade dispute, thus interfering with the federal law, is unsound. The regulated area of unemployment insurance benefits does not affect any proceeding before the National Labor Relations Board, nor does it affect any of the issues between the disputants or the Board. The states' position does not "interfere with the ability of the parties to carry on the controversy with or without NLRB invovement." *Sears, Roebuck & Co. v. San Diego County District Council of Carpenters, supra,* 52 Cal. App. 3d 690, 701.

The policy at issue is not labor-management relations but concerns a policy of social welfare. This Court has held that the area of economics and social welfare is one of compelling state interest, and that the states may address the problems of unemployment one step at a time:

> ". . . Finally, California has a legitimate concern in maintaining the contribution rate at a level that will not unduly burden participating employees, particularly low-income employees who may be most in need of the disability insurance." *Geduldig v. Aiello,* 417 U.S. 484, 496 (1974). *See also, Dandridge v. Williams,* 397 U.S. 471, 484-87 (1970); *Jefferson v. Hackney,* 406 U.S. 535, 546-51 (1972).

In California the Legislature has chosen to remain neutral in all cases where employees leave their work due to trade disputes. The Legislature could have reasonably concluded that payment of unemployment benefits to those who leave their jobs due to trade disputes would place an undue financial burden on the unemployment insurance program. In addition, the Legislature determined that it is appropriate for the State to assume a posture of neutrality in labor management disputes. *Matson Terminals, Inc. v. Cal. Emp. Com.*, 24 Cal. 2d 695, 707 (1944).

This legislative decision comports with the requirements set forth in *Garmon, supra*. Therefore, the State's jurisdiction in this area "is not overridden in the absence of clearly expressed congressional direction." On the contrary, Congress has not prohibited provisions barring unemployment insurance benefits to persons voluntarily on strike although all 50 states either refuse to grant unemployment insurance benefits to persons unemployed due to trade disputes or severely limit such benefits. *See Grinnell Corp. v. Hackett, supra*, 475 F. 2d 449.

Nash v. Florida Industrial Comm'n, 389 U.S. 235 (1967), relied upon by petitioners, offers no support for their position. In that case the State denied unemployment insurance benefits to a claimant who was laid off solely because she filed an unfair labor practices charge against her employer. This Court held that the State was in error in holding that her job had been terminated due to a labor dispute. The important point to note in *Nash*, however, is that the Court allowed Florida's statute denying unemployment insurance benefits to those unemployed due to labor disputes to stand.

Conclusion

For the foregoing reasons the Petition for Writ of Certiorari should be denied.

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